



INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Surname: Clement

First name: Jan

Nationality: Belgian

Seniority: 14 years

Identification of the internship

Host jurisdiction/institution: Council of State

Town/city: The Hague

Country: the Netherlands

Dates of the internship: 12 to 16 September 2022



I. Internship programme

Monday 12/9

Welcome and introduction by the organiser of the internship

Discussions with a Councillor of State from the Legal Section (spatial planning and environment) and a Councillor of State from the Advisory Section (budgetary control)

Tuesday 13/9

Meeting with a Councillor of State on the Internal Commission on European Union Law

Meeting with the Vice-President

Discussions with the Councillors of State for Aruba, Curaçao and Sint Maarten

Attend a meeting of Section IV of the Advisory Section (including discussion of the annual climate report)

Preliminary discussion with the lawyers of Thursday's public hearing of the competent Chamber for spatial planning

Wednesday 14/9

Meeting with a director of the Advisory Section

Discussions with lawyers of the Advisory Section

Attend the weekly meeting of the Advisory Section

Meeting with the President of the Legal Section

Thursday 15/9

Preliminary discussion with the Director of 'Unit O1' (spatial planning)

Attend the public hearing of the competent Chamber for spatial planning

Meeting with a lawyer about the new Dutch Spatial Planning Act

Friday 16/9

Meeting with the Director of the Knowledge Unit of the Legal Section

Meeting with the Director of the Legal Section

Meeting with the coordinators of the chambers responsible for spatial planning

Meeting with the Secretary of the Internal Commission on Constitutional Law

Assessment with the organiser of the internship

II. The host institution

The Council of State has two main tasks. The Advisory Section is responsible for advising the government and Parliament on legislation and administration, while the Legal Section is the supreme administrative court of the Netherlands. Presided over by His Majesty the King, the Council of State consists of a Vice-President, who directs the day-to-day business and organisation of the institution, and up to 10 members. The Advisory Section and the Legal Section include, in addition to these members, Councillors of State and Extraordinary Councillors of State. There are currently some 80 councillors in the Council of State. Members and councillors appointed to the Legal Section only must have a legal background. The Council of State is supported in its work by approximately 630 staff, including some 300 lawyers.

III. The law of the host country/ IV. The comparative law aspect of your internship

A. Role of the Advisory Section

The Advisory Section examines bills and other matters on which its opinion is sought on the basis of an assessment framework consisting of three parts: constitutional and legal analysis, technical analysis and political analysis. The Council of State therefore not only acts as an independent legal adviser to the government. Its role in the political sphere has been further strengthened by the mandate given to the Advisory Section to assess climate policy. In fact, the 2019 Climate Act stipulates that the Advisory Section will assess whether the government can meet the climate targets set by the Act. To some extent the Council of State appears to be a political actor, but this is based on a long constitutional tradition.

B. Internal organisation

Like the Dutch Council of State, the Belgian Council of State consists of a Legal Section and an Advisory Section. The main difference is that the Belgian Council of State has a legal adviser's office, consisting of independent magistrates who advise in both Sections. Moreover, in the Netherlands - unlike in Belgium - the chambers of the Legal Section are of no set composition, which means Councillors of State have to deal with a variety of subject matters.

There is also a significant difference in the way the Advisory Section is organised: unlike in Belgium, where the opinion is issued by different chambers, in the Netherlands the opinion is issued by the entire Advisory Section (17 Councillors of State), presided over by the Vice-President. This makes it easier to provide consistent advice.

V. The European aspect of your internship

The Dutch Council of State plays a leading role in monitoring the proper implementation of European Union environmental policy, in particular the protection of areas covered by the Habitats Directive. For example, in a judgment of 29 May 2019 the Legal Section ruled that the Dutch government's Nitrogen Approach Programme (NAP) could no longer be used to authorise activities that cause additional nitrogen emissions.

VI. The 'good practice' aspect within the jurisdiction visited

The Dutch Council of State focuses strongly on the development and sharing of knowledge. Not only are individual cases prepared in great detail, but a great deal of energy is also invested in preparing common positions in all possible areas on general legal issues. Many consultation systems exist in order to produce detailed notes on these general issues. In addition, there are two permanent units, consisting of specialised civil servants and Councillors of State, which support both the Advisory Section and the Legal Section: the Internal Commission on European Union Law and the Internal Commission on Constitutional Law.

As I was able to experience myself, during a truly impressive hearing, the following elements enable the Legal Section to reach a final settlement of the dispute ('finale geschillenbeslechting'):

- Officials draft a judgment that leaves several options open and suggests various questions that can be put to the parties at the hearing;
- At the hearing, not only the applicants but also the interested parties are present in person, and even if they have a lawyer, the individuals themselves take part in the debate;
- By asking the parties specific questions, the President of the Chamber and the Councillors of State ensure that they get to the heart of the matter; these questions are used to work towards a solution that can satisfy all parties;
- The layout of the room, with a microphone for standing contributions and projection screens (projection of zoning plans, questionnaires and online Google street view) allow for a clear and in-depth debate;
- The authorities show a cooperative attitude towards finding an amicable solution.

Specifically, in the case of the 'Broeksteeg' zoning plan, which was dealt with at the meeting of 15 September 2022, a solution was found at the hearing that satisfied all parties: it appeared from the answers to the targeted questions that the applicant's only concern was that

the old noisy fans in the stable would be replaced and the local authority was prepared to add this replacement as a condition to the zoning plan.

VII. Benefits of the internship

As a Councillor of State in the Legal Section, the highly educated way in which the Dutch Council of State achieves a final settlement of disputes is extremely inspiring. Practical elements, such as the presence of projection screens in courtrooms, may help in this regard.

In addition, the Dutch Council of State impresses with its thorough approach, internal cooperation and state-of-the-art knowledge sharing.

Finally, the Dutch Council of State shows how errors in case-law can be addressed. To explain this, it is necessary to go back to the case-law that existed until the end of 2019 in childcare allowance cases ('toeslagenaffaire'). On 23 October 2019, the Legal Section handed down two judgments, in which the 'all-or-nothing' line was abandoned. This was necessary to give justice to parents who – even in the case of minor errors – were confronted with having to pay back money already spent on childcare. Last year, the Council of State produced a report in which it examined its own case-law. In this report, the Legal Section concludes that the 'all-or-nothing' line was rightly criticised. The Section should have changed tack earlier. The Legal Section feels it is not enough to take half-measures and not go all the way. As a result, parents who were duped by the application of the 'all-or-nothing' line did not benefit from the legal protection they could rely on. The Section concludes: 'We are very sorry. This must not happen again.'

VIII. Suggestions

The visit to the Dutch Council of State was perfectly organised. It was not only informative and inspiring, but I also received a very warm welcome.